

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
Developing a Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92

**REPLY COMMENTS OF
THE NATIONAL TRIBAL TELECOMMUNICATIONS ASSOCIATION**

The National Tribal Telecommunications Association (NTTA) provides these reply comments in response to the Notice of Proposed Rulemaking¹ issued in the above-captioned proceedings. NTTA will address two main issues raised by other parties in the initial round of comments: (1) the revisions needed for the Indexed Cap and Rural Growth Factor (RGF), and (2) the changes necessary to the Budget Control Mechanism (BCM) for carriers serving Tribal areas.

I. THE RURAL GROWTH FACTOR MUST BE REVISED

NTTA agrees with NTCA, WTA, and the Small Company Coalition (SCC) that the High Cost Loop Support (HCLS) program's Indexed Cap and Rural Growth Factor (RGF) must be revised. According to NTCA "the cap on the HCLS has been *declining* each year – resulting in fewer funds

¹ *In the Matter of Connect America Fund*, et al., WC Docket No. 10-90, et al., Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking (rel. March 23, 2018) (*Order* or *NPRM*, as applicable).

being targeted to relatively higher-cost areas – due to the operation of an ironically named ‘rural growth factor’ that was designed nearly two decades ago and does not reflect the realities of today’s marketplace.”² WTA states “that this is the time for the Commission to provide HCLS recipients with relief from the adverse consequences of the rural growth factor.”³ The SCC “strongly urges the Commission address the seemingly endless reduction of HCLS via the RGF – a mechanism that was adopted at a time when total rural USF working loops were growing at an annual rate of 4.26%.”⁴

NTTA agrees with these comments and further adds that the RGF has caused substantial harm to NTTA members, and likely any HCLS recipient serving Tribal areas, in the form of reduced support while at the same time federal policy expects carriers to maintain voice networks and expand deployment, operations, and maintenance of broadband capable networks. The following table⁵ shows the reduction in HCLS for NTTA members caused by the Indexed Cap and RGF:

2018 HCLS Support

SAC	State	Company	Capped HCLS	Uncapped HCLS	Reduction	% Reduction
452169	AZ	San Carlos Apache Telecomm Utility, Inc	\$ 1,766,880	\$ 3,093,520	\$ 1,326,640	43%
452173	AZ	Tohono O'Odham Utility Authority	\$ 1,580,211	\$ 3,262,138	\$ 1,681,927	52%
452179	AZ	Gila River Telecommunications, Inc.	\$ 4,202,654	\$ 6,521,868	\$ 2,319,214	36%
452200	AZ	Fort Mojave Telecommunications, Inc.	\$ 1,102,524	\$ 1,668,291	\$ 565,767	34%
457991	AZ	Saddleback Communications Company	\$ 694,042	\$ 1,213,620	\$ 519,578	43%
491231	NM	Mescalero Apache Telecom, Inc.	\$ 642,622	\$ 1,224,567	\$ 581,945	48%
493403	NM	Sacred Wind Communications, Inc.	\$ 5,143,865	\$ 7,645,815	\$ 2,501,950	33%
391647	SD	Cheyenne River Sioux Tribal Tel. Authority	\$ 2,625,439	\$ 4,228,731	\$ 1,603,292	38%
Total NTTA			\$ 17,758,237	\$ 28,858,550	\$11,100,313	38%

² NTCA – The Rural Broadband Association Comments at 69

³ WTA Comments at 10

⁴ SCC Comments at 6

⁵ NECA: Overview and Analysis of 2017 USF Data Submission at Appendix G (Note – NTTA member Hopi Telecommunications, Inc. elected to receive Alternative Connect America Cost Model support and is not reflected in this data)

In essence, the above table shows HCLS calculated pursuant to the Commission's rules without regard to the Indexed cap (Uncapped Support) and the support resulting from application of the RGF (Capped Support). For NTTA members in total, the RGF caused an \$11 million reduction in support for 2018 (38%). In considering this substantial reduction in support, it is important to recognize that the RGF consists of a cumulative effect – the “negative growth” factor is applied each year to the previous year's total (capped) HCLS payments. Thus, the decreases in HCLS funding caused by the negative growth factor have accumulated over time and makes the results even worse than shown above.

NTTA agrees with NTCA and the SCC that the RGF needs to either be eliminated or the line “growth” component needs to be removed, leaving the RGF as a measure of the growth in inflation.⁶ While this course of action would necessitate an increase in the overall HCLS budget, the Commission could eliminate or revise the RGF for HCLS recipients that serve predominantly Tribal areas (for example, a carrier with a study area where 50% or more of the served census blocks are in Tribal areas), although NTTA prefers revising or eliminating the RGF for all HCLS recipients.

II. THE COMMISSION SHOULD ADOPT REVISIONS TO THE BUDGET CONTROL MECHANISM

Numerous parties addressed the BCM, a process adopted by the Commission to, in essence, automatically address situations where total HCLS and Connect America Fund Broadband Loop Support (CAF BLS) exceed the overall budget. In these cases, the current BCM

⁶ See NTCA comments at 69; SCC Comments at 7-8

reduces all recipients' support on a per-line and pro-rata basis. The BCM has made planning almost impossible in the unpredictable way HCLS and CAF BLS disbursements are determined each year. In the most recent iteration, the BCM caused an overall 15.5% reduction in HCLS and CAF BLS, a result that is entirely dependent on factors individual companies cannot predict or control.⁷ While the Commission took a good first step and eliminated the effect of the 2017/2018 BCM⁸, more must be done to alleviate or eliminate this problem.

In the *NPRM*, the Commission requests comment on adopting a establishing a threshold level of support not subject to the BCM. This threshold of support would ensure no legacy support recipient would realize a support reduction below a certain level. The Commission provides four alternatives: (1) set the uncapped amount of annual support at 80% of the amount a legacy carrier would have received had they elected the new model (ACAM) offer, (2) use the five-year CAF BLS forecast developed by NECA, (3) set the uncapped threshold at a specified fraction of each carrier's unconstrained 2016 or 2017 claims amount, or (4) limit any reductions to twice the "budget adjustment factor."⁹

Several parties support the concept of establishing a minimum level of support that would not be subject to the BCM caps. NTCA supports establishing a carrier-specific threshold "at an amount equal to the lesser of (a) an average of that carrier's three prior years of calculated high-cost USF support on an 'unconstrained' basis, or (b) the carrier's then-current level of 'unconstrained' support."¹⁰ WTA proposes "an uncapped threshold of 90 percent of each

⁷ USAC: *Federal Universal Service Support Mechanisms Fund Size Projections for Third Quarter 2018*, Appendix HC15

⁸ Order at 77

⁹ *NPRM* at 151-153

¹⁰ NTCA Comments at 35

carrier's unconstrained averaged claims for HCLS and CAF-BLS for the three preceding budget years.”¹¹ While NTTA supports NTCA's and WTA's proposals to the extent such a mechanism remains necessary (subject to the discussion below), the Commission must first address the overall budget problem it created in 2011 by establishing the budget based on 2010 support levels. In this regard, NTTA agrees with TCA's comment that the Commission's “focus should be on fully funding its existing cost recovery for cost-based RLECs”¹² instead of contemplating further complications for an already complicated and unpredictable budget control mechanism.

While NTTA recognizes the benefit of establishing a threshold, or floor, below which no carrier's support can go, or be reduced in any given year, which essentially addresses the predictability requirement that USF programs must meet, there is also a substantial issue with the sufficiency of support, especially in Tribal areas.¹³ The clear preference is to establish the budget at a sufficient level so as to eliminate the need for a budget control mechanism in the first place, or, at a minimum, at a level so that any mechanism is necessary only in rare instances. However, if a BCM is needed, then NTTA suggests the Commission institute a priority system for support recipients.

In its recent Lifeline program Notice of Proposed Rulemaking, the Commission requested comment on adopting a self-enforcing budget mechanism.¹⁴ As part of its proposed Lifeline program budget control mechanism, the Commission sought comment on “whether Lifeline

¹¹ WTA Comments at 28

¹² TCA Comments at 7

¹³ 47 U.S.C. § 254(b)(5) “There should be specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.”

¹⁴ *In the Matter of Bridging the Digital Divide for Low-Income Consumers*, et. al., WC Docket No. 17-287, Notice of Proposed Rulemaking (FCC 17-155, rel. December 1, 2017) at 105 (*2017 Lifeline NPRM*)

spending should be prioritized in the event that the cap is reached...”¹⁵ The Commission then proposed to prioritize funding to (1) rural Tribal areas, (2) rural areas, and (3) all other areas.¹⁶ NTTA suggests the Commission consider the same or similar prioritization hierarchy for the legacy support mechanism BCM, to the extent it remains necessary: (1) carriers serving predominantly rural Tribal areas, (2) carriers serving the highest cost rural areas, and (3) carriers serving all other rural areas. This would ensure support goes to where it’s needed, while at the same time providing some level of predictability for carriers serving those areas, a feature sorely needed in order to plan, implement, and operate the networks necessary to bring universal broadband service to the highest cost, most vulnerable areas of the country.

CONCLUSION

NTTA supports calls for the Commission to eliminate or revise the Indexed Cap on the HCLS program, specifically the RGF, that has served for years, and on a cumulative basis, to artificially and substantially reduce support for carriers serving rural and Tribal areas – the very areas most in need of support in order to bring services to customers in these most vulnerable of areas. In addition, NTTA supports the establishment of some kind of threshold of support below which no carrier will receive; however, NTTA recommends the Commission, should the BCM continue to be necessary, adopt a payment priority system that insures rural Tribal areas and other of the highest cost rural areas receive the support required to deploy, maintain, and operate broadband capable networks.

¹⁵ *Id.*, at 108

¹⁶ *Id.*

Respectfully Submitted,

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June 25, 2018